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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11
12 JUST GAMES INTERACTIVE
ENTERTAINMENT LLC d/b/a KUNG
13 FU FACTORY d/b/a TINY FUN
STUDIOS, a California limited liability
14 company,

15 Plaintiff,

16 vs.

17 GLU MOBILE, INC., a Delaware
corporation; KRISTEN JENNER f/k/a
18 KRIS KARDASHIAN, an individual;
and JOHN DOES 1-10; ,

19 Defendants.
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Case No. 2:15-CV-08626 PA

The Hon. Percy Anderson, United
States District Judge, presiding

**NOTICE OF MOTION AND
MOTION TO DISMISS THE
SECOND CLAIM FOR RELIEF
FOR CONTRIBUTORY
COPYRIGHT INFRINGEMENT
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 12(b)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: February 29, 2016
Time: 1:30 p.m.
Crtrm.: 15 (Spring Street)

Trial Date: Not Set

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 29, 2016, at 1:30 p.m., in Courtroom 15 of the above-captioned court, located at 312 North Spring Street, Los Angeles, California 90012, the Hon. Percy Anderson presiding, Defendant Kristen Jenner will move, and hereby does move, for an order dismissing, with prejudice, the Second Cause of Action for Contributory Copyright Infringement in Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Complaint [Doc. 1] ¶¶ 31-34.)

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the concurrently filed Motion to Dismiss of Co-Defendant Glu Mobile, Inc. (and all papers filed in connection therewith), all records and pleadings on file with the Court in this action, and on such further evidence and argument as the Court may lawfully consider in the exercise of its discretion.

This motion is made following a conference of counsel pursuant to L.R. 7-3, which took place on January 19, 2016.

DATED: January 27, 2016

Respectfully submitted,

KINSELLA WEITZMAN ISER
 KUMP & ALDISERT LLP

By: /s/Michael J. Kump
 Michael J. Kump
 Attorneys for Defendant Kristen Jenner

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Just Games Interactive Entertainment LLC (“Just Games”) filed a complaint in this action against Defendants Glu Mobile, Inc. (“Glu”) and Kristen Jenner (“Jenner”), purporting to state a First Cause of Action for “Direct Copyright Infringement” against Glu, and a Second Cause of Action for “Contributory Copyright Infringement” against Jenner.¹ (Complaint [Doc. 1] ¶¶ 22-34.) Both claims are based on Just Games’ allegations that Glu’s game, *Kim Kardashian: Hollywood*, infringes Just Games’ alleged copyright in a short slide presentation regarding a videogame concept supposedly created by Just Games. (*Id.* ¶¶ 13-15, 23-25.)²

Jenner hereby moves to dismiss the claim for contributory copyright infringement for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). Concurrently with this motion, Jenner’s co-defendant Glu is filing a motion to dismiss the claim for direct copyright infringement. For the reasons set out in that motion and supporting papers, Just Games has not, and cannot, state a viable claim for copyright infringement as a matter of law. Thus, its claim for direct copyright infringement must be dismissed with prejudice and without leave to amend. *See Zella v. E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1128 (C.D Cal. 2007) (“[W]hen the copyrighted work and the alleged infringement are both before the court, capable of examination and comparison, non-infringement can be determined

¹ The title to the Second Cause of Action states that it is asserted against “Kris Jenner and the Kardashians,” but according to the caption, Kris Jenner is the only person or entity named in the Complaint as a defendant, other than Glu.

² Although the factual allegations of the Complaint are conceded for purposes of this motion only, Jenner notes that the material facts alleged in the Complaint are largely untrue and unsupported. Albeit immaterial to this motion, Jenner does not concede that Just Games’ slide presentation is entitled to copyright protection at all. Just Games also purports to state a Third Cause of Action against Jenner for Breach of Implied Contract. (Complaint [Doc. 1] ¶¶ 35-42.) That claim has no merit in fact or law, but Jenner does not address it at this time.

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on a motion to dismiss.”), quoting *Christianson v. West Pub. Co.*, 149 F.2d 202, 203 (9th Cir.1945).

Rather than repeat the legal arguments set out in Glu’s papers, Jenner incorporates those arguments by reference and adopts them as her own.

Because Just Games has failed to state a claim for direct copyright infringement, Just Games necessarily has failed to state a claim against Jenner for contributory infringement (or any other theory of secondary copyright liability). It is settled that “secondary liability for copyright infringement does not exist in the absence of direct infringement by a third party.” *Fox Broad. Co. v. Dish Network L.L.C.*, 747 F.3d 1060, 1068 (9th Cir. 2014), quoting *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 n. 2 (9th Cir. 2001). Accordingly, Just Games’ claim against Jenner for contributory copyright infringement must be dismissed along with its claim for direct copyright infringement.

For the reasons stated, including those set out in the motion of Defendant Glu, Defendant Kristen Jenner respectfully requests that the Court dismiss with prejudice Just Games’ Second Cause of Action against her for contributory copyright infringement. (Complaint [Doc. 1] ¶¶ 31-34.)

DATED: January 27, 2016

Respectfully Submitted:

KINSELLA WEITZMAN ISER
 KUMP & ALDISERT LLP

By: /s/Michael J. Kump

Michael J. Kump
 Attorneys for Defendant Kristen Jenner

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